REMARKS

The Examiner is thanked for the Office action.

Regarding support for the new claim language, the changes on lines 9-13 in amended claim 74 are described on page 17 of the specification. The remaining amendments concern the segmentation process, and support for these amendments are found in the text that begins on page 25, line 30 and that continues through line 7 on page 27. The specifics of the described recursion are set forth at page 27, lines 3-7. The process flow illustrated in FIG. 3 and the description at page 30, lines 11-23 also provide support for this portion of the claim amendment.

No new matter is included, and entry is requested.

Claims 74 and 76-78 are rejected under 35 U.S.C. §102(e) as being anticipated by Herz, U.S. Publication No. 2001/0014868. In view of the claim amendment, this rejection is now believed to be moot.

Herz describes a system for the automatic determination of customized prices and promotions. The system automatically constructs product offers tailed to individual shoppers, or types of shopper, in a manner designed to optimize a vendor's profits. The offers are represented digitally (e.g., on-line). In this approach, the behavior of shoppers is tracked and the system accumulates extensive profiles of the shoppers and the offers that they consider. Data is clustered to facilitate analysis. In operation, the system selects, presents, prices and promotes goods and services tailored to the individual consumer.

Herz FIG. 2 illustrates a chart of typical offers that are processed by the system for the automatic determination of customized prices and promotions. As described in paragraph [0164], the approach implements a "hierarchical clustering" technique that produces a tree (FIG. 3) which divides the offers first into two large clusters of roughly similar offers; each of these clusters is in turn divided into two or more smaller clusters, which in turn are each divided into yet smaller clusters until the collection of offers has been entirely divided into "clusters" consisting *of a single offer each.* FIGs. 6-7 illustrate other representative menu trees used for the technique. The Herz specification does not explain these other menu trees.

Herz does not disclose or suggest a "segmentation process" that has the following explicit characteristics that are now positively recited:

"a segmentation process programmed to segment a target visitor population into a set of segments using one or more templates each comprising one or more cells, wherein the target visitor population comprises visitors defined by a set of visitor profile attributes, each visitor profile attribute comprising one or more portions, each portion corresponding to one or more values or range of values of an attribute, wherein values associated with one or more attributes corresponds to a cell, and the set of segments, collectively, comprise the target visitor population, wherein the segmentation process uses an algorithm to identify a segmentation by determining, recursively, beginning with a single segment that includes all of the set of segments representing the target visitor population, and continuing for each new segment resulting from a split until no new segments are produced, whether to split a segment into two or more disjoint smaller segments based on whether a weighted performance of the two or more disjoint smaller segments is better than that of the segment"

Herz does create attribute-based profiles, and they do provide mechanisms for clustering those profiles to facilitate the determination of what customers should get what offers, but the reference does not include the specific "segmentation process" algorithm now positively recited. In this regard, the "tree" shown in FIG. 3 concern segmenting the offers, not the visitors (shoppers), and the tree there merely segments the overall set of offers into single offers (note the individual leafs at the bottom of the tree).   The "trees" shown in FIG. 6 and 7 are not explained in any detail.

To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). The claimed subject matter must be disclosed "clearly and unequivocally" in the reference. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972). Moreover, anticipation is <u>not</u> established if, in reading a claim on something disclosed in a reference, it is necessary to pick, choose and combine various portions of the disclosure, which according to the teachings of the reference, are not directly related to each other. *Id.*, 455 F.2d at 587-88.   The prior art reference must describe every limitation in a claim either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).   Inherent anticipation, however, cannot be based on possibilities or probabilities. *Akamai Tech., Inc. v. Cable & Wireless Internet Serv., Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003) ("A claim limitation is

inherent in the prior art only if it is necessarily present in the prior art, not merely probably or possibly present."); _In re Robertson_, 169 F.3d 743, 745 (Fed. Cir. 1999) ("Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art").

"Absence from the reference of any claimed element negates anticipation." _Kloster Speedsteel AB v. Crucible, Inc._, 793 F.2d 1565, 1571 (Fed.Cir.1986).

Herz does not anticipate amended claim 74.

Dependent claims 75-78 are patentable for at least the same reasons.

The rejection of claim 75 under 35 USC §103 for alleged obviousness over Herz is noted. This rejection also is moot in view of the claim amendment. With due respect, the differences between the subject matter (the segmentation process algorithm) now recited and the teachings in Herz would not have been obvious to one of ordinary skill at the time of the invention.

STATEMENT OF THE SUBSTANCE OF THE INTERVIEW

An informal personal Interview was conducted with Examiner Macasiano and Examiner Saba Dagnew on Tuesday, April 17, 2012. The proposed amendment to claim 74 was presented, and there was a brief discussion concerning the amendment and the Herz reference. No agreement was reached. The undersigned agreed to submit the formal response to the Office action.

The Examiner's Summary dated April 23, 2012, is accurate.

CONCLUSION

Nothing herein shall be deemed an admission regarding the Examiner's factual findings or conclusions including, without limitation, the findings and conclusions regarding each dependent claim. Nevertheless, separate arguments regarding the dependent claims are considered unnecessary at this time due to the deficiencies noted above. Applicant reserves the right to distinguish the Examiner's findings and conclusions regarding these other claims in any future communication regarding this matter.

A Notice of Allowance is requested.

Respectfully submitted,

/David H. Judson/

By: _____

David H. Judson, Reg. No. 30,467

ATTORNEYS FOR APPLICANT

May 15, 2012